



October 19, 2005

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EX PARTE – VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *In the Matter of Regulation of Prepaid Calling Card Services;*
WC Docket No. 05-68 – Written Ex Parte Notice

Dear Ms. Dortch:

General Communication, Inc. (GCI) submits this *ex parte* in response to the filing by AT&T in the referenced proceeding, submitted on July 15, 2005, and subsequent related filings. As an initial matter, it is imperative that the FCC take all necessary steps to ensure that the correct jurisdictional information associated with a calling card call is passed through to the terminating LEC so that appropriate access charges and universal service requirements may be applied to the call. As raised by other parties in this proceeding,¹ the FCC should prohibit carriers from inserting, including at the calling card platform, removing, or altering any information that may alter the jurisdictional nature of the call. This prohibition should apply regardless of the locus in the call data stream of the information.

In this docket, AT&T has set forth a certification process intended to ensure compliance by prepaid calling card providers with access charge and universal service contribution requirements. As GCI has previously demonstrated in this proceeding, the best means for ensuring compliance is to remove the incentive for cheating.² Increasing volumes of call data is stripped or altered, or traffic is routed in such a way (often internationally) to mask the

¹ See Letter from Donna Epps, Vice President Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-68, 01-92 (Sept. 9, 2005) at 3.

² See Letter from Tina Pidgeon, Vice President Federal Regulatory Affairs, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-68 (June 29, 2005) (Attachment at 1).

jurisdictional classification of the call, so that otherwise applicable charges are not applied. The best way to address such behavior is to mandate the opposite result – allow the assessment of the *highest* rate – when such activity occurs. GCI continues to urge the Commission to adopt this solution until comprehensive intercarrier compensation reform itself addresses the incentive for such behavior by eliminating arbitrary rate levels by service technology, regulatory classification, and jurisdiction.

To the extent a more targeted prepaid card solution is required in the meantime, a modified AT&T certification proposal offers an acceptable, shorter-term solution. The AT&T proposal offers several key features that must be part of any certification of this type. As GCI understands it, both an interstate and intrastate PIU would be reported per LATA (or in the case of Alaska, per state) and per LEC. These specifications are critical to the PIU having any applicability whatsoever. In addition, audit rights must be afforded not only to LECs, which are expected to rely on PIUs in the absence of actual call data, but also to other carriers, like IXCs, whose access payments may be affected by the PIU reportings of others. Finally, certain modifications are required to the AT&T proposal to close loopholes that would otherwise permit calling card providers to circumvent the intent of the framework – that is, to best ensure that appropriate charges and USF contributions are paid for prepaid calling card traffic.

First, interstate and intrastate access charges should continue to apply. The record does not support sweeping all prepaid calling card traffic into the interstate bucket (as AT&T had originally requested), and the AT&T certification proposal correctly provides for the reporting of interstate, intrastate, and international minutes by each reporting provider, by LATA and by LEC.

Second, a methodology for developing the reported PIU must be established to ensure accuracy and to minimize incentives by providers to avoid reporting actual data if the default PIU would put them in a more beneficial position. For these reasons, GCI proposes the following methodology:

- (1) A provider should first determine a PIU according to all jurisdictionally identifiable traffic;
- (2) If the volume of jurisdictionally unidentifiable traffic is 30 percent or less of a provider's total traffic, the PIU established under (1) will be applied to the unidentifiable traffic, to develop a "blended" PIU for that provider's total prepaid traffic; and
- (3) If the volume of jurisdictionally unidentifiable traffic exceeds 30 percent of the provider's total prepaid calling card traffic, or if the provider fails to report a PIU, then a default PIU of 20 percent interstate (and 80 percent intrastate) applies.

While GCI agrees with AT&T that a default PIU is a useful mechanism, the 50 percent PIU proposed by AT&T provides too great an incentive for providers with a high volume of intrastate traffic (with typically higher applicable access charges) to simply opt out of the PIU development (based on actuals) process. Providers are much more likely to use actual data, use accurate PIUs, and follow the reporting requirements when the default PIU tends to provide a

less favorable result than compliance. In addition, all providers should be required to retain documents and data relied upon to develop PIUs for a minimum of two years after a reported PIU is in effect.

Third, GCI disagrees with AT&T's proposal that all minutes of calls where "there is no terminating leg of a call" between the calling card platform to a called party be treated as interstate.³ This approach assumes without any support that such calls are effectively placed "to" the calling platform. These calls, which include non-answer calls and calls abandoned by customers frustrated with the duration of calling card spam, should be treated no differently than any other incomplete call for which originating access is due. Originating access is charged from the time the long distance provider's switch "winks back" to the LEC switch upon pick-up of the call. The jurisdiction of the access charges (interstate or intrastate) is determined by the calling and called parties end points, or by PIU. There is no reason to depart from this practice in the case of calling cards: where sufficient call data is available to determine the jurisdiction of the call (*i.e.*, the calling and called numbers), then access for the appropriate jurisdiction is determined on that basis; when insufficient call data is available, then the default PIU (developed in the manner set forth herein) should be applied to ratio the traffic between jurisdictions. What should *not* occur is the arbitrary skewing of minutes toward the interstate jurisdiction that would result from AT&T's proposed treatment, especially given the high incidence of incomplete calling card calls.⁴

Fourth, the Commission should specify an enforcement regimen for any entity found to be stripping or jurisdictionally altering location data, or routing calls in such a manner to evade otherwise applicable jurisdictional classifications. The Commission should direct the Enforcement Bureau to initiate an investigation of any prepaid card provider within 30 days of a submission supported by test calling samples that shows the provider to be (1) stripping or altering call data, or routing calls in a manner designed to change call jurisdiction, or (2) carrying traffic that measurably departs from the reported PIUs. For the purpose of assessing forfeitures for such fraudulent activity, each minute so affected should be treated as a separate offense.

³ Letter from Judy Sello, Senior Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-68 (July 15, 2005) (Attachment at 4, last paragraph before "Universal Service").

⁴ See Letter from Judy Sello, Senior Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-68 (Oct. 12, 2004) at 3 (stating that 17-20% of calls involve only an interstate communication with the platform).

Ms. Marlene H. Dortch
October 19, 2005
Page 4 of 4

Please address any questions regarding the foregoing to the undersigned.

Sincerely,

/s/

Tina M. Pidgeon
Vice President, Federal Regulatory Affairs

cc: Dan Gonzalez
Michelle Carey
Scott Bergmann
Russ Hanser
Jessica Rosenworcel
Tom Navin
Tamara Preiss
Steve Morris
Lynne Hewitt Engledow